

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Montgomery County Board of County
Commissioners, *et al.*,

Plaintiff,

v.

Cardinal Health, Inc., *et al.*,

Defendants.

Case No. 18-op-46326

Judge Dan Aaron Polster

**Track 7 Defendants’ Motion to Stay All Track 7 Proceedings
Pending the Sixth Circuit’s Resolution of the Track 3 Appeals**

The Track 7 Defendants¹ hereby move to stay all Track 7 proceedings pending the Sixth Circuit’s resolution of the Track 3 appeals.² As set forth more fully in the accompanying memorandum of law, the Track 3 pharmacy defendants have appealed from “the final judgment entered on August 22, 2022 (Dkt. 4614), as well as all orders leading to that judgment.” (MDL ECF Nos. 4619, at 1; 4620, at 1; 4621, at 1.) The Track 3 appeals will present a host of issues for the Sixth Circuit to resolve. Among them will be the Ohio-specific and potentially dispositive issue of whether the Ohio Product Liability Act abrogates Ohio public-nuisance claims that are based on the distribution or dispensing of prescription opioids. The Sixth Circuit’s resolution of the

¹ The Track 7 Defendants are Meijer, Inc.; Meijer Distribution, Inc.; Meijer Stores Limited Partnership (collectively, “Meijer”); The Kroger Co.; Kroger Limited Partnership I; Kroger Limited Partnership II (collectively, “Kroger”); Walgreen Co.; Walgreens Boots Alliance, Inc. (collectively, “Walgreens”); CVS Indiana L.L.C.; CVS Rx Services, Inc.; CVS TN Distribution, LLC; CVS Pharmacy, Inc.; Ohio CVS Stores, LLC; Oakwood CVS, Inc. (collectively, “CVS”); and Walmart Inc. (“Walmart”).

² The Track 3 appeals refer to Case Nos. 22-3750, 22-3751, and 22-3753, which were timely filed by entities for Walgreens, CVS, and Walmart, respectively, and which are currently pending before the Sixth Circuit.

Track 3 appeals could dispose of the Ohio public-nuisance claim that is the crux of Track 7 and will, at minimum, simplify the issues to be litigated in Track 7, which is unique among the other active bellwethers in its overlap with Track 3. It would be far more efficient and economical—for this Court, the transferor court, and the Track 7 parties—to await the Sixth Circuit’s forthcoming decision before proceeding further with Track 7. A stay also would not hinder the progression of this MDL, which has multiple other cases proceeding towards trial. The Track 7 Defendants thus request a stay of all Track 7 proceedings pending the Sixth Circuit’s resolution of the Track 3 appeals, as well as for any further and additional relief that is appropriate.

Dated: October 6, 2022

Respectfully submitted,

/s/ Elizabeth A. Laughlin

Joseph M. Vanek, jvanek@sperling-law.com

Greg Shinall, shinall@sperling-law.com

David P. Germaine, dgermaine@sperling-law.com

Trevor K. Scheetz, tscheetz@sperling-law.com

Matthew H. Rice, mrice@sperling-law.com

Elizabeth A. Laughlin, elaughlin@sperling-law.com

SPERLING & SLATER, P.C.

55 West Monroe Street, Suite 3200

Chicago, Illinois 60603

(312) 641-3200 (p)

Counsel for Meijer

/s/ Eric R. Delinsky (with permission)

Eric R. Delinsky, edelinsky@zuckerman.com

Alexandra W. Miller, smiller@zuckerman.com

Paul B. Hynes, Jr., phynes@zuckerman.com

ZUCKERMAN SPAEDER LLP

1800 M Street NW, Suite 100

Washington, DC 20036

(202) 778-1800 (p)

Counsel for CVS

/s/ Alex J. Harris (with permission)

Alex J. Harris, alex.harris@bartlitbeck.com
BARTLIT BECK LLP
1801 Wewatta Street, Suite 1200
Denver, Colorado 80202
(303) 592-3100 (p)

Kaspar J. Stoffelmayr, kaspar.stoffelmayr@bartlitbeck.com
Katherine M. Swift, kate.swift@bartlitbeck.com
BARTLIT BECK LLP
54 West Hubbard Street
Chicago, Illinois 60654
(312) 494-4400 (p)

Alec H. Schultz, aschultz@hilgersgraben.com
HILGERS GRABEN PLLC
1221 Brickell Avenue, Suite 900
Miami, Florida 33131
(305) 630-8304 (p)

Michael Burns, mburns@hilgersgraben.com
HILGERS GRABEN PLLC
601 Pennsylvania Avenue NW
South Building Suite 900
Washington, DC 20004
(202) 985-1664 (p)
Counsel for Walgreens

/s/ Tara A. Fumerton (with permission)

John M. Majoras, jmmajoras@jonesday.com
JONES DAY
51 Louisiana Avenue, N.W.
Washington, DC 20001
(202) 879-3939 (p)

Tina M. Tabacchi, tmtabacchi@jonesday.com
Tara A. Fumerton, tfumerton@jonesday.com
JONES DAY
110 N. Wacker Drive
Chicago, Illinois 60606
(312) 269-4335 (p)
Counsel for Walmart

/s/ Ronda L. Harvey (with permission)

Ronda L. Harvey, rh Harvey@bowlesrice.com

Ashley Hardesty Odell, ahardestyodell@bowlesrice.com

Jennifer Hagedorn, jhagedorn@bowlesrice.com

BOWLES RICE

600 Quarrier Street

Charleston, West Virginia 25301

(304) 347-1701 (p)

Counsel for Kroger

CERTIFICATE OF SERVICE

I, Elizabeth A. Laughlin, certify that on October 6, 2022, I caused the foregoing *Track 7 Defendants' Motion to Stay All Track 7 Proceedings Pending the Sixth Circuit's Resolution of the Track 3 Appeals* to be filed and served on all counsel of record via the Court's ECF filing system.

/s/ Elizabeth A. Laughlin